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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,467	10/16/2003	Gino Cocchi	P08077US00/MP	5435
881 7590 02/13/2007 STITES & HARBISON PLLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314			EXAMINER WEIER, ANTHONY J	
			ART UNIT 1761	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/13/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/685,467

Applicant(s)

COCCHI ET AL.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by
Zumbe et al.

Zumbe et al discloses a process wherein a milk composition is injected with an inert gas (e.g. carbon dioxide) under pressure (and therefore bubbled therein) at a temperature of, for example, about 45 C. It should be noted that it is inherent that such milk composition may be used in the preparation of ice cream as ice cream employs a milk component.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2, 4-6, and 8-12 are rejected under 35 U.S.C. 103(a) as being
unpatentable over Zumbe et al.

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The claims further call for the carbon dioxide to be bubbled through the liquid mixture. Zumbe et al discloses same as carbon dioxide is injected into a liquid and therefore bubbled therein.

It should be noted that instant claims 2 calls for the use of a temperature as low as "approximately 50 C". Taking into account the wiggle room in using approximately and about in the prior art and instant claim 2, respectively, it is considered expected that such ranges would overlap. However, if it is shown that this is not the case, it would have been obvious to one having ordinary skill in the art at the time of the invention to have chosen a temperature around 45 C and close to 50 C (and therefore, being just within or at an endpoint of each range) as a matter of preference within the ranges recited.

The claims further call for the particular time said milk mixture is treated. Zumbe et al is silent regarding such time and is silent regarding limits on same. However, such determination would have been well within the purview of a skilled artisan, and it would have been further obvious to have arrived at the processing time of the instant invention as a matter of preference depending on, for example, the degree of inert gas treatment and result thereof desired.

The instant claims call for using pressure in the range set forth in claim 5 and use of approximately 5.5 bar in claim 6. Even though Zumbe et al discloses a range of pressure encompassing that called for in claims 5 and 6, there is no specific recitation of the range/pressure amounts set forth in claims 5 and 6. Nevertheless, it would have been further obvious to have employed any of the pressure values within the range of

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Zumbe et al (1.2 – 8 bar) including those of the instant invention as a matter of preference in the absence of a showing of unexpected results.

Allowable Subject Matter

3. Claims 3 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Reasons for Allowance

4. With respect to claims 3 and 9, the prior art of record does not disclose nor teach pasteurization of a liquid mixture for ice cream wherein same is heated at approximately 55 C while simultaneously injecting same with carbon dioxide under the pressure in the manner as called for in the instant claims. The closest prior art, Zumbe et al, requires an upper temperature limit of "about 45 C".

Response to Arguments

5. Applicant's arguments filed 12/13/06 have been fully considered but they are not persuasive.

Applicant argues that Zumbe et al is not concerned with pasteurization of a liquid material. However, due to the temperature and high pressure used in Zumbe et al and as employed in the instant invention, it is considered inherent that same would destroy microorganisms within the milk composition and thus render same pasteurized to a particular degree. It has not been shown or demonstrated that the process of Zumbe et al would not or could not pasteurize the treated material.

All other arguments have been addressed in view of the rejections set forth above.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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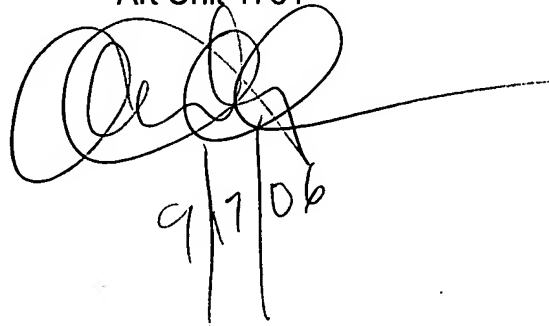
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier
September 17, 2006

Anthony Weier
Primary Examiner
Art Unit 1761



9/1/06